

**Letter of Findings Number: 08-0714P
Sales and Use Tax
For the Tax Year 2005**

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ISSUES

I. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

II. Tax Administration–Interest.

Authority: IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest.

STATEMENT OF FACTS

Taxpayer is an Indiana taxpayer. The Indiana Department of Revenue (Department) issued proposed assessments for gross retail ("sales") tax, interest, and ten percent negligence penalties for the 2005 tax year. Taxpayer requests abatement of the penalties and interest.

I. Tax Administration–Penalty.

DISCUSSION

Taxpayer protests the imposition of the penalties. The Department refers to IC § 6-8.1-10-2.1(a)(3), which provides "if a person... incurs, upon examination by the department, a deficiency that is due to negligence... the person is subject to a penalty."

The Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive the negligence penalty as provided in [45 IAC 15-11-2\(c\)](#), in pertinent part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer incurred an assessment which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). Taxpayer has argued for a general waiver of penalty based upon Taxpayer's loss of its investments, Taxpayer's business operating at a substantial loss, Taxpayer's subsequent sale of the business, and Taxpayer's current financial situation. Nonetheless, Taxpayer has not provided sufficient grounds in its protest to justify the Department's waiver of penalty.

FINDING

Taxpayer's penalty protest is denied.

II. Tax Administration–Interest.

DISCUSSION

Taxpayer protests the imposition of interest on the tax liabilities. The Department refers to IC § 6-8.1-10-1(a) which provides, as follows:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Moreover, pursuant to IC § 6-8.1-10-1(e), the Department does not have the authority to waive the interest.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protests of the penalty and interest assessments are denied.

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